

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF OPTOMETRISTS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

RICHARD FRANKEL, O.D.
License No. 27OA00348200

FINAL ORDER
OF DISCIPLINE

TO PRACTICE OPTOMETRY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Optometrists upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent is an optometrist in the State of New Jersey and has been a licensee at all times relevant hereto.
2. The Board issued a Modified Letter of Settlement to Respondent on January 21, 2005, which required Respondent to cease and desist from maintaining illegible and incomplete patient records in the future; served as a formal reprimand for violations of N.J.S.A. 45:1-21(e) and N.J.A.C. 13:38-2; imposed a penalty in the amount of \$2500 and costs in the amount of \$396; required reimbursement of the amount of \$560 to the patient and imposed a requirement that Respondent successfully complete a five hour course in record keeping and a ten hour course in refraction. Both course to be taken at an accredited college of optometry or in the alternative the Board will permit COPE approved courses. Courses were to be pre-approved by the Board and both courses were to be completed within ninety days of respondent's acceptance of the settlement offer.

3. The Modified Settlement Letter was accepted on September 15, 2005. Therefore, the courses were to be completed by December 15, 2005.

4. On September 20, 2005, written notification was sent advising respondent that he failed to comply with the terms of the Settlement Letter in that he had not submitted the payment for reimbursement to the patient, nor the full amount of the penalty and costs which were due immediately upon acceptance of the settlement.

5. On December 7, 2005, correspondence was sent to respondent from the Board requesting payment of the outstanding penalty and costs as well as the amount of reimbursement due to the patient and reminding respondent that the Modified Settlement Letter required him to complete the stated courses on or before December 15, 2005. The letter also reminded the respondent of his duty to cooperate pursuant to N.J.S.A. 13: 45C-1.1 et seq.

6. On December 15, 2005, respondent submitted a letter to the Board explaining that he had a severe financial hardship due to medical expenses incurred by him and his wife and an incident of theft by an employee in his office. He requested additional time to comply with the terms of the agreement.

7. On December 27, 2005, the Board issued a letter that required respondent to reimburse the \$560.00 due the patient in this matter by January 5, 2006, and further provided that he was to complete the course detailed in the accepted Settlement Letter by January 24, 2006, and to pay the outstanding penalty and costs in this matter by March 27, 2006 .

8. On January 23, 2006, respondent by letter remitted payment in full for the reimbursement amount due to the patient. Respondent questioned the Board as to availability of affordable courses. The Board advised respondent in writing on February 16, 2006, that he had the opportunity to take COPE approved courses, or in the alternative, courses offered at an accredited college of optometry such as the Pennsylvania College of Optometry or the State University of New York's College of Optometry. Respondent was also reminded that courses were

to be pre-approved before they were taken and was granted a ninety day (90) extension to complete both courses. Therefore, the courses were to be completed no later than May 16, 2006.

9. On April 24, 2006, respondent submitted copies of the syllabus from the courses that he attended. On June 16, 2006, correspondence was sent to the respondent confirming the Board's acceptance and approval of 11 credits obtained for COPE sponsored refraction courses. However, the remainder of the courses submitted were rejected as they were not record keeping courses.

10. On October 19, 2006, respondent submitted correspondence with proofs that he had attended a continuing education course on October 25, 2006 sponsored, by the New Jersey Society of Optometric Physicians entitled "You're leaving Money on the Table." and Two Vision Expo courses on April 1, 2006, one entitled "Understanding the New Medicare G". Neither of these courses were accepted by the Board as one was a coding course and the other was a billing course nor were the courses pre-approved or dealt with record keeping issues.

11. As a result of the respondent's noncompliance with the terms of the Modified Settlement Letter the Board invited respondent to appear at an investigative inquiry on March 21, 2007.

12. Respondent appeared without counsel and asserted that he had taken a record keeping course which was not pre-approved and he was not then able to provide the name of the record keeping course nor written proof that he had completed it. Respondent was advised that the record would remain open until the April 18, 2007, meeting to permit him to submit written proof of having satisfactorily taken a record keeping course.

13. On January 4, 2007, the Board filed a Certificate of Debt with the Clerk of the Superior Court in the amount of \$2896.00 which includes \$2500 for the penalty imposed and \$396 for the costs incurred in this matter.

14. A Provisional Order of Discipline was entered by this Board on May 12, 2007.

15. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 20th business day following entry unless respondent requested a modification or dismissal of the state Findings of Fact or Conclusions of Law by submitting a written request for modifications or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitted any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

16. On June 6, 2007, Respondent submitted a cashier's check in the amount of \$2896.00, which was payment for the outstanding penalties and costs imposed. Additionally, on June 8, 2007, Respondent submitted correspondence with proof that he had attended two continuing education courses, one on October 25, 2006, sponsored by the New Jersey Society of Optometric Physicians entitled "The Role of Medical Records in Disease Management." and one Vision Expo course. The former course was accepted by the Board as a record keeping course. However, the latter course was not accepted by the Board as it is a coding course and does not deal with record keeping issues.

17. Respondent has not satisfactorily complied with the terms and conditions of the modified letter of settlement. Respondent is required to complete two hours of continuing educational courses in record keeping in order to satisfy the terms.

CONCLUSIONS OF LAW

1. The above facts provide grounds for the revocation or suspension of respondents license to practice Optometry in New Jersey pursuant to N.J.S.A 45: 1-21(e) and N.J.A.C. 13: 45C-1.4 in that respondent's conduct constitutes professional misconduct for his failure to comply with the terms of a Board Order.

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending respondent's license to practice Optometry in the State of New Jersey was entered on


May 12, 2007, and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 20th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modifications or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons thereof. The respondent submitted documentation as proof of continuing educational courses taken for the Board's consideration.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was not persuaded that the submitted materials merited further consideration, as respondent did not dispute the Findings of Fact or Conclusions of Law.

ACCORDINGLY, IT IS on this 15th day of August, 2007,
ORDERED that:

1. Respondent's license to practice optometry in the State of New Jersey be and hereby is suspended until such time as respondent has satisfactorily complied with the outstanding requirements from the agreed upon modified settlement letter which includes documentation acceptable to the Board of satisfactory completion of a two hour record keeping course.
2. Prior to resuming active practice in New Jersey respondent shall be required to appear before the Board (or a committee thereof) to demonstrate his fitness to do so, and any practice in this State prior to said appearance shall constitute grounds for a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF OPTOMETRISTS

By 

Mitchell Fink, O.D.
Board Vice-President